Professor Burdick appears to find the basis of his view that the acceptance of title does not bar the right of rescission for breach of a condition in the leading case of *Street* v. *Blay*, *supra*. But certainly the decision in that case does not warrant it, for rescission was refused; nor is there anything in the opinion to indicate it. Lord Tenterden says the vendee "has no right . . . to return . . . unless there has been a condition in the contract authorizing the return, or the vendor has received back the chattel." It is very clear that this was intended to mean nothing more than "a term in the contract authorizing the return." And the cases cited by Lord Tenterden do not suggest the distinction. Professor Burdick's view has the support of Mr. Benjamin. BENJAMIN, SALES, 7th ed., § 887. But no decisions are cited in support of the author's statement. Whatever the English law has been in the past, it appears to be settled now by the Sale of Goods Act. But this only purported to codify the existing law. See also *Behn* v. *Burness*, 3 B. & S. 751, 755.

THE STOCKHOLDER'S RIGHT TO VOTE. — Since stability and permanence became recognized as essential to the management of large corporate enterprises, the commercial desire to attain these essentials has induced the making of voting trusts and stockholders' voting agreements. From the legal standpoint, these devices for control raise the most important questions concerning the nature of the stockholder's voting power and the stockholder's duty as regards voting. Upon the answer to these questions depend the vast financial arrangements attending the railroad reorganizations of recent years. The reluctance of the courts to adopt the commercial view and the uncertainty in which the decisions have left the question are set forth by Mr. Edward A. Harriman in an article on *Voting Trusts and Holding Companies*, 13 Yale L. J. 109 (Jan. 1904). Mr. Harriman urges that the stockholder's voting power is a property right which may be separated irrevocably from his legal as well as from his beneficial ownership; and that the stockholder may make any arrangement he wishes for the exercise of this property right, so long as he observes his duty not to deprive other stockholders of their substantial rights in the corporation.

So long as the stockholder votes in person, no "motives or promptings of what he considers his individual interest" can restrict his voting power. *Pender* v. *Lushington*, L. R. 6 Ch. D. 70, 90. But he owes the duty to the other stockholders, it is sometimes said, to express and exercise his judgment in respect to the affairs of the corporation. *Harvey* v. *Linville Improvement Co.*, 118 N. C. 693. This alleged duty, it seems, is the basis of the oft-repeated maxim that "an untrammelled right to vote shall be incident to the ownership of the stock." *Shepang Voting Trust Cases*, 60 Conn. 553, 576. How far these statements of the duty of the stockholder and the nature of his voting power are borne out by the cases may best be seen in the decisions upon three classes of voting arrangements: first, contracts between stockholders to vote their stock as a unit for the policy directed by a majority of their number; second, contracts between stockholders by which proxies, not accompanied by the transfer of stock on the books of the corporation, are given to trustees who may vote as they determine; third, contracts between stockholders by which their stock is transferred on the books of the corporation to trustees, who pay over the dividends to the transferring stockholders but vote the stock as they themselves determine. The first sort of arrangement is generally held legal, but the opinion is freely expressed that it is revocable. *Fauld* v. *Yates*, 57 Ill. 416. In one jurisdiction such an agreement has been held irrevocable. *Smith* v. *San Francisco, etc., Ry. Co.*, 115 Cal. 584. On the other hand, in reviewing an arrangement of this sort the purpose of which was fraudulent, one trial court has declared all such agreements illegal. *Cone* v. *Russell*, 48 N. J. Eq. 208. But see *Chapman* v. *Bates*, 61 N. J. Eq. 658. The second sort of arrangement has been generally held legal, but the implication is strong that it is always revocable. *Brown* v. *Pacific Mail, etc., Co.*, 5 Blatchf. (U. S. C. C.) 525. One jurisdiction, indeed, has held such an agreement irrevocable. *Mobile, etc., R. R. Co.* v. *Nicholas*, 98 Ala. 92. Another, in the

instance of such an arrangement which was fraudulent in its inception, has declared all such agreements illegal. *Shepang Voting Trust Cases, supra.* The third sort of arrangement, consistently with the foregoing decisions, has been held legal and irrevocable. *Chapman* v. *Bates, supra.* A squarely contrary decision, however, has been reached by another court. *Harvey* v. *Linville Improvement Co.*, 118 N. C. 693.

In this state of the authorities, generalization upon the nature of the stockholder's voting power and the stockholder's duty as regards voting must be hazardous. The notion that the stockholder owes the duty to the other stockholders to express his personal judgment in respect to the control of the corporation, it is submitted, is contrary to principle, and has been properly repudiated. The voting power, it seems, is not, as Mr. Harriman contends, a property right capable of being irrevocably separated from the legal ownership, but is a right incident to the legal title of the shares, and, like the legal title, capable of being irrevocably separated from the beneficial ownership: a right which, subject to revocation, may be delegated by proxy to an agent, but which cannot be irrevocably alienated from the legal title. This view seems most convenient for the corporation, which need not inquire into the beneficial ownership, but may safely admit the registered holder's vote. It makes practicable a device for attaining legitimate permanence in corporate management, without closing the opportunity for attacking fraudulent combinations. Finally, although opposed by several decisions and many *dicta*, it seems in accord with the weight of authority.

LIABILITY OF TELEGRAPH COMPANIES. — No legal problems are of greater interest, or of more practical importance, than those arising from the application of existing law to new circumstances, and among these one which has been the subject of protracted conflict, and still remains without solution, is the liability of telegraph companies for the negligent transmission of messages. The two most difficult questions which arise are in regard to the right of the sendee, (1) to maintain an action, (2) to recover for mental suffering.

A recent text writer in an elaborate and careful article seeks to answer these questions in the affirmative. *Liability of Telegraph Companies*, by Morris Wolf, 42 Am. L. Reg. 715 (Dec. 1903). After showing that the English courts never allow the sendee to recover, the writer takes up the various theories upon which recovery has been permitted in this country. Of these, two are worthy of careful attention. Many jurisdictions allow the sendee to sue as the beneficiary of the contract between the sender and the company, while others permit recovery in tort on the general ground of negligence. The first theory, as Mr. Wolf indicates, must be very limited in its application, since a sendee is often injured where the contract was not really made for his benefit. The impracticability of doing justice upon this ground is shown by the decisions of Texas, the most prominent advocate of this theory, which seem to justify the author's suggestion that the courts of that jurisdiction have held these contracts to be for the benefit of the sender or sendee according to which party first brought suit. *Cf. Western Union Teleg. Co.* v. *Adams*, 75 Tex. 531, and *Potts* v. *Western Union Teleg. Co.*, 82 Tex. 545. Moreover, it is well settled that recovery for mental anguish will not be allowed in a contract action, and the Texas cases in allowing such damages have reached that result through the aid of the Texas code, which abolishes distinctions between actions in tort and contract. As regards the second theory, Mr. Wolf would agree with those jurisdictions which allow recovery in tort for substantial damage, but he considers this principle also inadequate to cover cases where the only damage is mental. To meet this last class of cases he proposes a third theory based upon the suggestion that a telegraph company, as a public servant, owes to every member of the community a duty to do its work carefully.

The writer is to be complimented on his thorough collection and careful analysis of the cases, but his conclusions seem open to criticism. To allow recovery against the company on the basis suggested, presents two difficulties.